IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.07.2007

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
and
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Writ Appeal No.835 of 2003

The Correspondent,
St.Joseph's Residential School,
Highways Road,
Irrunkulam,
Ponthur Panchayat,
Kancheepuram District. Appellant/Petitioner in WP.10359/01.

v.

1. The State of Tamilnadu, through
the Secretary, Local Administration,
Fort St. George, Chennai 600 009.

2. The Panchayat Board, Ponthur,
through its President,
Ponthur,
Kancheepuram District. Respondents/Respondents in WP.10359/01.

Writ Appeal filed under clause 15 of the Letters Patent against the order dated 07.02.2003 made in WMP. No.14945 of 2001 in writ petition No.10359 of 2001 Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of declaration declaring that the provision in Schedule I under Section 172 of Tamil Nadu Panchayat Act [Act 21/94] is unconstitutional and void in so far as the said section confines the exemption only to those educational institutions [not commercial in nature] which were constructed prior to the commencement of the Act 21/23 and not to those such Educational Institution buildings which were constructed after commencement of Act 21/94 and consequently forbearing the Respondent from implementing Section 172 of Act 21/94 as far as the Education institution buildings of the petitioner under Assessment No.543 at Ponthur Panchayat concerned.

For Appellant : Mr.A.R.Nixon
For Respondent 1: Mr.P.Subramani,
Government Advocate
For Respondent 2: Mr.G.Sankaran

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JUDGMENT

(Judgment of the Court was delivered
by K.RAVIRAJA PANDIAN, J.)

This appeal is filed against the order dated 7.2.2003 made in W.M.P.No.14945 of 2001 in Writ Petition NO.10359 of 2001, whereby the interim relief sought for seeking injunction restraining the second respondent from levying and collecting the house tax for building under assessment No.543 for assessment years 1999-2000 to 2001-2002 and in future invoking Section 172 of the Tamil Nadu Panchayat Act Act 21 of 1994) pending the writ petition, was rejected by the learned single Judge on the premise that "the appellant has not challenged the validity of the provision Section 172 of the Tamil Nadu Panchayat Act. That would mean, as on date, the respondents were entitled to collect the tax exercising power under the said provision. When the respondents are having power under the Act, the petitioner could not sustain the petition for injunction against the respondents".

2. Heard the learned counsel on either side and perused the materials on record.

3. It is well recognised principle of law that the presumption is always in favour of the validity of an enactment, since it must be assumed that the Legislature understands and correctly appreciates the need of its own people that its law are directed to problems made manifest by experience and its discrimination are based on adequate grant. The presumption may be rebutted in certain cases by showing that on the face of the statute, its invalidity is apparent and the statute or a particular provision, which is under challenge, was ex facie illegal or against the scheme of the enactment. Unless or otherwise it is proved and established as such to the satisfaction of the Court, which exercise could only be done at the time of final hearing, interim order of the present nature cannot be granted, particularly, when as rightly pointed out in the order under challenge, that the appellant has not challenged the validity of Section 172 of the Tamil Nadu Panchayat Act.

4. Section 83 of the Panchayat Act amended by Act No.42 of 1994 whereby in sub-section (1) of the Tamil Nadu District Municipalities Act, 1920, in clause (e), for the words "public buildings and places used for charitable purpose", the words "buildings used for educational purpose including hostels attached thereto, public buildings and places used for charitable purpose" shall be substituted. Thus, it is the duty of the appellant to establish before this Court that the appellant would come within the provisions of the Act.

5. Learned counsel for the appellant sought to argue that the appellant is imparting education to pupils by obtaining aid from the Government and if the property tax is sought to be recovered from the appellant, they will have to shift the burden on the pupils only.

6. If the appellant is really furthering the charitable cause, it can pay the property tax, which in turn would be utilised for fulfilling

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the welfare measures to the general public, which is also furthering the cause of the public.

7. As we have already come to the conclusion that unless and until the appellant establishes the illegality of the amendment with reference to the touchstone of the Constitution, the amendment brought in, shall be presumed to be legally done. Hence, the writ appeal is dismissed.

8. At this stage, the appellant advanced arguments on the difficulty in making payment of property tax. It is always open to the appellant to approach the learned single Judge to get the main writ petition disposed of at an early date.

9. With this observation, the writ petition is dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

mf/usk

To

1. The Secretary, Local Administration,
   State of Tamilnadu,
   Fort St. George, Chennai 600 009.

2.The President
  Panchayat Board, Ponthur,
  Ponthur, Kancheepuram District.

+ 1 CC to the Government Pleader SR NO 45047

W.A.No.835 of 2003

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